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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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DEC - 5 2002

Federal Communications Commission
Office of the Secretary

In the Matter of)

Citizens Telecommunications Company)
of North Dakota)

Nemont Telephone Cooperative, Inc)

Missouri Valley Communications, Inc)

Reservation Telephone Cooperative)

Joint Petition for **Waiver** of the Definition of "Study Area")
Contained in **Part 36, Appendix--Glossary** of the)
Commission's **Rules**)Petition for Waiver of **Section 61.41(c)(2),**)
Section 69.3(e)(11) and 69.605(c) of the)
Commission's Rules)

CC Docket 96-45

SUPPLEMENT TO JOINT PETITION FOR EXPEDITED WAIVERS

Citizens Telecommunications Company of North **Dakota** ("Citizens"), and Nemont Telephone Cooperative, Inc (Nemont) **and** Missouri Valley Communications, Inc . ("MVCI") and Reservation Telephone Cooperative, ("RTC") (collectively, the "Acquiring **Companies**"). by their attorneys, hereby supplement the Joint Petition for Expedited **Waiver** (~~Joint~~ Petition) filed on September **24**, 2002, in which the Parties requested waiver of certain Commission rules. Specifically, the Parties requested waiver of the definition of "study ~~area~~" contained in the Appendix-Glossary ~~of Part~~ 36 of the Commission's Rules to allow Citizens to sell the assets of its Williston, North **Dakota** exchange to MVCI and its **Alexander** and Watford City, North **Dakota**

exchanges to RTC; to delete these exchanges from Citizens' ~~North Dakota~~ study area; and to add these exchanges to the existing North ~~Dakota~~ study areas of ~~Nemont~~ and RTC. In addition, RTC requested a waiver of the Commission's rule ~~Section 61.41 (c)(2)~~ so that *it* may be regulated under rate of return once the assets of Citizens are acquired; ~~Nemont~~ requested a waiver of the definition of "average schedule company" included in ~~Section 69.605(c)~~ of the Commission's Rules; and the ~~Acquiring~~ Companies requested a waiver of ~~Section 69.3(e)(11)~~ of Commission's Rules concerning participation in the NECA ~~carrier common~~ line tariff, as necessary.

I. AVERAGE SCHEDULE WAIVER

Pursuant to this supplement, ~~Nemont~~ and MVCII clarify that they both seek a waiver of the definition of "average schedule company" included in ~~Section 69.605(c)~~ of the Commission's Rules. As indicated in the Joint Petition, MVCII was created to purchase and operate the Williston exchange, which will be added to ~~Nemont's~~ existing ~~North Dakota~~ study area. Further, ~~Nemont~~ is an average schedule company and MVCII and ~~Nemont~~ wish to operate as average schedule carriers after the acquisition of the Citizens' assets. Therefore, MVCII and ~~Nemont~~ request a waiver of ~~Section 69.605(c)~~, so that they may operate as average schedule carriers when the ~~Citizens~~ exchanges are added to the existing ~~Nemont~~ average schedule study area in ~~North Dakota~~.

Section 69.605(c) defines an "average schedule company" as a telephone company that was participating in average settlements on ~~December~~ 1, 1982¹. This definition "grandfathers" existing average schedule companies as of December 1, 1982, but precludes the creation of new average schedule companies or the conversion of cost companies to average schedule companies after that

¹ 47 C.F.R. §69.605(c).

date without a waiver from the Commission.² In addition, pursuant to this section, an average schedule company acquiring additional lines would be required to convert to operation as a cost-based company unless it obtained a waiver. Accordingly, MVCI and Nemont must obtain a waiver of the rule to operate as an average schedule company.

As noted in Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C.,³ the special circumstances that the Bureau has found to justify waivers of Section 69.605(c) fall into three broad categories, including a category "to ensure a smooth settlement process."⁴ The Commission has found in previous cases that a waiver is warranted in situations, such as this, where a new company will share the study area with an average schedule affiliate. According to the Commission, a waiver is warranted because of the special circumstance created by the interaction of two Commission policies, namely: 1) the Commission generally requires newly acquired exchanges to be added to existing study areas in the same state and 2) jurisdictional separations and Universal Service Fund (USF) assistance are determined at the study area level. Thus, all affiliates in a single study area must be under the same settlement method for performing interstate settlements. Application of Section 69.605(c) in such circumstance would have the unintended effect of requiring the parent company to convert to cost-based settlement in order to be able to acquire the subject exchange. The Commission has found that this effect could be unnecessarily burdensome on the new company and its parent.

² See Wilderness Valley Telephone Company, 13 FCC Rcd 4511 (1998).

³ Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C., CC Docket No. 96-45, DA 00-2473 (Acc. Pol. Div., rel. Nov. 3, 2000) at Par. 13.

⁴ See Baltic Telecom Cooperative et al., AAD No. 96-95, 12 FCC Rcd 2433 (Acc. Aud. Div. 1996); Accent Communications, Inc. et al., AAD No. 95-124, 11 FCC Rcd 11513 (Acc. Aud. Div. 1996); BEK Communications L Inc. et al., AAD No. 95-72, 11 FCC Rcd 10855 (Acc. Aud. Div. 1996).

The proposed transaction satisfies the same special circumstances as those found to justify prior "smooth ~~settlement process~~" category Section 69.605(c) waivers. MVCI is seeking to acquire small, rural exchanges and join the existing Nemont North Dakota study area, and Nemont is an existing and established average schedule company. As noted in this Petition, the proposed transactions will create significant public interest benefits.

If Section 69.605(c) were applied to the proposed transaction, it could have the unintended effect of requiring Nemont to convert its existing exchanges from average schedule status to cost-based settlements. Such a conversion would be unduly burdensome because Nemont and MVCI would have to spend time, effort and funds on cost studies that heretofore were used to improve the quality of service furnished to subscribers. In addition, Nemont estimates that it would cost approximately \$62,000 in annual recurring cost and \$25,000 in non-recurring cost to perform the required cost studies. The high cost of completing a cost study relative to the small size of Nemont and MVCI further demonstrates that a waiver is warranted.

In previous similar circumstances where a waiver was granted, the Commission has imposed certain requirements to ensure that there is no unintended effect on interstate revenue requirements or in administrative burdens on the Commission or NECA. Fit, the Commission has required the companies and their affiliates to report to NECA on a combined basis for interstate average schedule and USF purposes, subject to the limitations established on USF for acquired exchanges. Second, if any affiliate converted from average schedule status to cost-based settlements, or elected Section 61.39 treatment, the Commission required all other affiliates to convert to that settlement status. Third, the Commission permitted the average schedule status of the companies to remain in effect only while they were under common control with their respective affiliates. As indicated in the Joint Petition, Nemont and MVCI are willing to accept these

conditions to ensure that the waiver will not result in unintended effects on the petitioners' interstate revenue requirements or result in an administrative burden on the Commission or NECA.

II. CONCLUSION

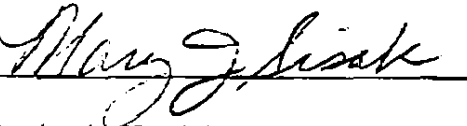
The Parties ask the Commission to accept this supplement to the Joint Petition filed on September 24, 2002, to make clear that both MVCI and Nemont request waiver of Section 69 605(c) For the reasons stated herein and in the Joint Petition, the Parties also respectfully request that the Commission expeditiously review and approve the Joint Petition. as supplemented.

Respectfully submitted,

NEMONT TELEPHONE COOPERATIVE, INC.

MISSOURI VALLEY COMMUNICATIONS, INC.

RESERVATION TELEPHONE COOPERATIVE

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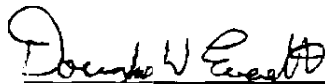
Dated: October **25.2002**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served by hand delivery on this 25th day of October, 2002, to the persons listed below:

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